

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROGER KINKENNON,

Plaintiff,

vs.

Case No. 1:09-cv-644 WDS/DJS

**OHIO CASUALTY INSURANCE
COMPANY,**

Defendant.

**AMENDED ORDER GRANTING DEFENDANT'S FIRST MOTION
FOR SUMMARY JUDGMENT**

This matter is before the Court *sua sponte*. On August 6, 2010 the Court entered an order (Document 29) granting Defendant's First Motion for Summary Judgment, filed June 4, 2010. (Document 26). Defendant sought summary judgment on three grounds: 1) Plaintiff was not entitled to UM/UIM coverage under the policy; 2) Plaintiff was not entitled to PIP benefits under the policy; and 3) Plaintiff could not state a claim for bad faith or breach of New Mexico's Unfair Insurance Practices Act. (UIPA) In its August 6, 2010 order the Court addressed the first two grounds but inadvertently failed to address the remaining issue. It will do so now.

The Court's determination that the Ohio Casualty Policy does not provide UM/UIM or PIP coverage to Plaintiff is dispositive of Plaintiff's extra-contractual claims for bad faith and violation of the UIPA. Such extra-contractual claims do not survive a determination that the policy does not provide coverage. *New Memorial Assoc. v. Credit Gen. Ins. Corp.*, 973 F. Supp. 1027, 1031 (D.N.M.1997); *Sena v. Travelers In. Co.*, 801 F. Supp. 471, 477 (D.N.M. 1992). Accordingly, the Defendant's Motion for Summary Judgment is well taken in its entirety, and the Court will dismiss

Plaintiff's complaint with prejudice and enter judgment in Defendant's favor.

IT IS THEREFORE ORDERED that Defendant's First Motion for Summary Judgment, filed June 4, 2010. (Document 26) is granted in its entirety.

A handwritten signature in black ink, appearing to read 'W.D. Schneider', is written above a horizontal line.

W. DANIEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE